

**Federal Defenders
OF NEW YORK, INC.**

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

August 29, 2019

Hon. Paul A. Crotty
Judge, United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: United States v. Joshua A. Schulte, 17 Cr. 548, (PAC)

Hon. Judge Crotty,

We write regarding the government's discovery production of consensual audio recordings (46 discs in total) that the CIA continues to designate as "Secret Pending Classification Review." Because these consensual recordings were made by individuals at the behest of law enforcement (be it the CIA or the FBI), because law enforcement knew that the recordings were being made to secure a "confession" from Mr. Schulte, and also knew that Mr. Schulte (who was being recorded) was not in a Sensitive Compartmented Information Facility ("SCIF"), these recordings cannot be properly marked as Secret /Classified.

There is no doubt that when being recorded, Mr. Schulte was not in a SCIF and was not speaking on a secure/classified phone line.

To illustrate, one such consensual recording was made by an ex-CIA employee who invited Mr. Schulte to a shooting range in Virginia, while another one of these consensual recordings was made when Mr. Schulte was invited by his once-colleague to take a walk around the bucolic Bryant Park in New York City. That the government arranged for these recordings to be made in public fully defeats all reason to classify the recordings as "Secret."

The Honorable Paul A. Crotty
United States District Judge
Southern District of New York

August 29, 2019

Re: United States v. Joshua Schulte, 17 Cr. 548 (PAC)

As the Court is well aware discovery in this case is beyond voluminous. The recordings are of poor quality and the cost of getting a cleared transcriber to transcribe 46 discs is exorbitantly high. So that Mr. Schulte's counsel is not burdened with reviewing non-classified discovery in the SCIF, the Court should order the CIA to undertake immediate review of the recordings and inform the Court as to the basis on which they continue to insist that recordings made in public places are "Secret" under the Protective Order that governs such production.

We thank the Court for its time and consideration.

Respectfully submitted,

/s/

Sabrina Shroff & Edward Zas
Counsel for Joshua Schulte

cc: All Counsel